

1 PAUL L. REIN, ESQ. (SBN 43053)
2 CELIA MCGUINNESS, ESQ. (SBN 159420)
3 CATHERINE CABALO, ESQ. (SBN 248198)
4 LAW OFFICES OF PAUL L. REIN
5 200 Lakeside Drive, Suite A
6 Oakland, CA 94612
7 Telephone: 510/832-5001
8 Facsimile: 510/832-4787
9 reinlawoffice@aol.com

6 STEVEN L. DERBY, ESQ. (SBN 148372)
7 THE DERBY LAW FIRM P.C.
8 1255 Treat Blvd. Suite 300
9 Walnut Creek, CA 94597
10 Telephone: 925/472-6640
11 Facsimile: 925/933-3964
12 derby@derbydisabilitylaw.com

10 Attorneys for Plaintiffs
11 MAX WADMAN and KELLY TOPPING

12 * *Defendants' counsel listed after the caption.*

13 IN THE UNITED STATES DISTRICT COURT
14 IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA

15 MAX WADMAN and KELLY
16 TOPPING,

17 Plaintiffs,

18 v.

19 DISCOVERY BAY YACHT HARBOR,
20 LLC; NEW DISCOVERY, INC.;
21 DISCOVERY BAY MARINA
22 PROPERTIES, a California General
23 Partnership; KEN HOFMANN;
24 WALTER L. YOUNG; RONALD
25 DAWSON; WALTER L. YOUNG and
26 MARY C. YOUNG, TRUSTEES OF
27 THE YOUNG REVOCABLE TRUST
28 DATED FEBRUARY 11, 1999; AND
DOES 1-100, inclusive,

Defendants.

CASE NO. C14-5035 WHA

Civil Rights

CONSENT DECREE AND ~~PROPOSED~~
ORDER AS TO INJUNCTIVE RELIEF
ONLY

//

//

COX WOOTTON LERNER GRIFFIN & HANSEN LLP
RUPERT P. HANSEN (SBN 082302)
CHRISTOPHER S. KIELIGER (SBN 209121)
JULIETTE B. McCULLOUGH (SBN 278929)
900 Front Street, Suite 350
San Francisco, CA 94111
Telephone: 415.438.4600
Facsimile: 415.438.4601

Attorneys for Defendants
DISCOVERY BAY YACHT HARBOR, LLC ,
KEN HOFMANN, individually, RONALD DAWSON,
Individually, and MARY C. YOUNG,
Trustee of The Young Revocable Trust

CONSENT DECREE AND [PROPOSED] ORDER

1. Plaintiffs MAX WADMAN and KELLY TOPPING filed a Complaint in this action on November 14, 2014, alleging violations of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. sections 12101 *et seq.*, California civil rights laws and common law tort claims against Defendants DISCOVERY BAY YACHT HARBOR, LLC ("DBYH LLC"); NEW DISCOVERY, INC.; DISCOVERY BAY MARINA PROPERTIES, a California General Partnership; KEN HOFMANN; WALTER L. YOUNG; RONALD DAWSON; WALTER L. YOUNG and MARY C. YOUNG, TRUSTEES OF THE YOUNG REVOCABLE TRUST DATED FEBRUARY 11, 1999 (collectively, "Defendants") relating to, *inter alia*, barriers to access at Discovery Bay Yacht Harbor as of March 22, 2014, and continuing. Specifically, Plaintiffs alleged that Defendants failed to provide full and equal access to their facilities at Discovery Bay Yacht Harbor, Discovery Bay, California.

2. Defendants DBYH LLC; KEN HOFMANN; RONALD DAWSON; MARY C. YOUNG, as TRUSTEE OF THE YOUNG REVOCABLE TRUST DATED FEBRUARY 11, 1999 (collectively "Answering Defendants") were served and answered the Complaint. Answering Defendants do not admit liability to any of the allegations in Plaintiffs' Complaint filed in this action.

3. Pursuant to Rule 41(a)(1)(A)(ii) of the Federal Rules of Civil Procedure all parties who

1 have appeared in this lawsuit have stipulated to a Dismissal Without Prejudice of the following
 2 Defendants: NEW DISCOVERY, INC.; DISCOVERY BAY MARINA PROPERTIES, a
 3 California General Partnership; RONALD DAWSON; WALTER L. YOUNG; WALTER L.
 4 YOUNG and MARY C. YOUNG, TRUSTEES OF THE YOUNG REVOCABLE TRUST
 5 DATED FEBRUARY 11, 1999, with each party to bear their own costs.

6 4. Plaintiffs and defendants DBYH LLC and KEN HOFMANN (collectively, “the Signing
 7 Defendants”; collectively with Plaintiffs “the Signing Parties”) hereby enter into this Consent
 8 Decree and Order for the purpose of resolving the injunctive relief issues in this lawsuit without
 9 the need for protracted litigation and without the admission of any liability. The Signing Parties
 10 jointly stipulate and request the Court not dismiss the action because issues of standing, liability,
 11 damages and attorney fees, litigation costs and expenses remain to be resolved.

12
 13 **JURISDICTION:**

14 5. The Signing Parties to this Consent Decree agree that the Court has jurisdiction of this
 15 matter pursuant to 28 U.S.C. section 1331 for alleged violations of the Americans with Disabilities
 16 Act of 1990, 42 U.S.C. sections 12101 *et seq.*, and pursuant to supplemental jurisdiction for
 17 alleged violations of California law.

18 6. In order to avoid the costs, expense, and uncertainty of protracted litigation, the Signing
 19 Parties to this Consent Decree agree to entry of this Order to resolve all claims regarding
 20 injunctive relief raised in the Complaint filed with this Court. Accordingly, they agree to the entry
 21 of this Order without trial or further adjudication of any issues of fact or law concerning Plaintiffs’
 22 claims for injunctive relief.

23 WHEREFORE, the parties to this Consent Decree hereby agree and stipulate to the
 24 Court's entry of this Consent Decree and Order, which provides as follows:

25
 26 **SETTLEMENT OF INJUNCTIVE RELIEF:**

27 7. This Order shall be a full, complete, and final disposition and settlement of Plaintiffs’

claims against Signing Defendants DBYH LLC and KEN HOFMANN for injunctive relief that have arisen out of the subject Complaint. The Signing Parties agree that there has been no admission or finding of liability and this Consent Decree and Order shall not be construed as such.

8. **Remedial Measures:** Defendant DBYH LLC will remediate each barrier to access as described in the Remediation Chart attached and incorporated herewith as Exhibit A. As used in this Consent Decree and [proposed] Order, “remediate” and “accessible” mean to construct and maintain in full compliance with the Americans with Disabilities Act Standards and/or California Building Code Title 23-2 (2013), whichever is more stringent for a given element.

9. **Timing:** Defendant DBYH LLC will complete each item by the date stated in the Remediation Chart.

10. **Written Policy:** Within 30 days of the Signing Parties signing this Consent Decree, DBYH LLC will implement written policies as follows:

1. DBYH LLC will check opening force and closing speed of doors at the Harbor Office, public restrooms and accessible gates at least every six months and adjust as necessary to maintain their accessibility.
2. Accessible Slips shall be leased as follows:
 - a. If a person or persons with a disability (“PWD”) requests an uncovered berth but an accessible one is not available, a covered berth will be leased at the uncovered berth price.
 - b. Similarly, an accessible long berth will be leased to a PWD at the short berth price, if an accessible short berth is not available.
 - c. The accessible berths shall be reserved for PWD unless and until all other berths are leased, at which time they may be leased to any potential tenant;
 - d. If all non-accessible berths are leased and an accessible berth is therefore leased to a person without a disability, a clause should be inserted in the accessible berth’s lease agreements that should an equally long inaccessible slip subsequently become

1 available, the lessee shall be moved to that inaccessible berth, freeing the accessible
2 berth for a potential PWD.

3 3. Upon request, DBYH will provide an accessible key/means of operating gate locks to a
4 PWD.

5 4. The fuel dock and pump-out dock, and the adjacent guest slips will be closed to public
6 access to/from the shore.

7 5. DBYH LLC will (a) check opening force and closing speed of doors at the Harbor Office,
8 public restroom and pier accessible gates at least every six months and adjusting as
9 necessary to maintain their accessibility; (b) maintain all accessible paths of travel free of
10 barriers.

11 6. DBYH LLC will train all relevant employees on these new policies within 30 days of the
12 Signing Parties signing this Consent Decree, will incorporate the policies into its employee
13 handbook and will train relevant new employees on these policies as they are hired.

14 **11. Compliance:**

15 a. Defendant DBYH LLC will retain and pay Gilda Puente-Peters or another certified
16 access specialist of its choice to conduct one site inspection by January 31, 2016, to report
17 upon and confirm completion of the remedies specified in paragraph 8 above. DBYH LLC
18 will provide a copy of each report to Plaintiffs' counsel within 15 days of receipt. In
19 addition, DBYH LLC will retain and pay Gilda Puente-Peters or another certified access
20 specialist of its choice to return by January 31, 2017, to confirm continued compliance
21 with accessibility laws and to advise on any potential barriers to access that have arisen.
22 DBYH LLC will make all readily achievable modifications recommended by said access
23 specialist, in addition to changes necessary to bring DBYH LLC into compliance with this
24 Consent Decree. DBYH LLC will provide a copy of this report to Plaintiffs' counsel
25 within 15 days of receipt.

26 b. In case of dispute between Plaintiffs and Signing Defendants over whether DBYH
27 LLC has complied with the terms of this Consent Decree and [proposed] Order, or in case

Plaintiffs dispute the findings of the access specialist, the Signing Parties will meet and confer for not less than 30 days prior to bringing any motion to compel compliance. If the dispute remains, Plaintiffs may bring a motion to compel compliance.

ENTIRE CONSENT ORDER:

12. This Consent Decree and Order, Attachment A to this Consent Decree, and Exhibits A-1, A-2 and A-3 to Attachment A, which are incorporated herein by reference as if fully set forth in this document, constitute the entire consent agreement between the Signing Parties on all issues in this case.

CONSENT ORDER BINDING ON SIGNING PARTIES AND SUCCESSORS IN INTEREST:

13. This Consent Decree and Order shall be binding on the Signing Parties and all successors in interest. The Signing Parties have a duty to so notify all such successors in interest of the existence and terms of this Consent Decree and Order during the period of the Court's jurisdiction of this Consent Decree and Order.

TERM OF THE CONSENT DECREE AND ORDER:

14. This Consent Decree and Order shall be in full force and effect, and the Court shall retain jurisdiction of this action to enforce provisions of this Order ~~through December 31, 2017, or whenever remediation is complete, whichever comes later.~~ for 90 days following the entry of judgment or dismissal of the entire case.

SEVERABILITY:

15. If any term of this Consent Decree and Order is determined by any court to be unenforceable, the other terms of this Consent Decree and Order shall nonetheless remain in full force and effect.

SIGNATORIES BIND SIGNING PARTIES:

1 16. Signatories on the behalf of the parties represent that they are authorized to bind the
2 parties to this Consent Decree and Order. This Consent Decree and Order may be signed in
3 counterparts and a facsimile signature shall have the same force and effect as an original
4 signature.

5
6 Dated: 11 AUG, 2015

PLAINTIFF MAX WADMAN


MAX WADMAN

7
8
9 Dated: _____, 2015

PLAINTIFF KELLY TOPPING

10
11 _____
KELLY TOPPING

12
13 Dated: _____, 2015

DEFENDANT DISCOVERY BAY YACHT HARBOR,
LLC

14
15 By: _____
JOHN E. AMARAL, Authorized Representative for
16 Discovery Bay Yacht Harbor, LLC

17 Dated: _____, 2015

DEFENDANT KEN HOFMANN

18
19 _____
KEN HOFMANN

20
21
22 **APPROVED AS TO FORM:**

23 Dated: _____, 2015

CELIA McGUINNESS, ESQ.
LAW OFFICES OF PAUL L. REIN
STEVE DERBY, ESQ.
DERBY DISABILITY LAW

24
25
26 By: _____
Attorneys for Plaintiffs

~~File~~
925-933-3964

16. Signatories on the behalf of the Signing Parties represent that they are authorized to bind the parties to this Consent Decree and Order. This Consent Decree and Order may be signed in counterparts and a facsimile signature shall have the same force and effect as an original signature.

Dated: _____, 2015

PLAINTIFF MAX WADMAN

MAX WADMAN

Dated: Sept 8, 2015

PLAINTIFF KELLY TOPPING



KELLY TOPPING

Dated: _____, 2015

DEFENDANT DISCOVERY BAY YACHT HARBOR, LLC

By: _____
JOHN E. AMARAL, Authorized Representative for
Discovery Bay Yacht Harbor, LLC

Dated: _____, 2015

DEFENDANT KEN HOFMANN

KEN HOFMANN

APPROVED AS TO FORM:

Dated: _____, 2015

CELIA McGUINNESS, ESQ.
LAW OFFICES OF PAUL L. REIN
STEVE DERBY, ESQ.
DERBY DISABILITY LAW

By: _____
Attorneys for Plaintiffs
MAX WADMAN and KELLY TOPPING

1 16. Signatories on the behalf of the Signing Parties represent that they are authorized to bind
2 the parties to this Consent Decree and Order. This Consent Decree and Order may be signed in
3 counterparts and a facsimile signature shall have the same force and effect as an original
4 signature.

5
6 Dated: _____, 2015 PLAINTIFF MAX WADMAN

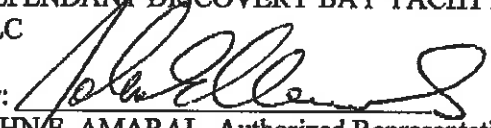
7
8 _____
MAX WADMAN

9
10 Dated: _____, 2015 PLAINTIFF KELLY TOPPING

11
12 _____
KELLY TOPPING

13 Dated: August 21, 2015

14 DEFENDANT DISCOVERY BAY YACHT HARBOR,
LLC

15 By: 
16 JOHN E. AMARAL, Authorized Representative for
Discovery Bay Yacht Harbor, LLC

17
18 Dated: 8/21, 2015

19 DEFENDANT KEN HOFMANN

20 
KEN HOFMANN

21
22 APPROVED AS TO FORM:

23 Dated: _____, 2015

24 CELIA McGUINNESS, ESQ.
LAW OFFICES OF PAUL L. REIN
STEVE DERBY, ESQ.
25 DERBY DISABILITY LAW

26 By: _____
Attorneys for Plaintiffs
27 MAX WADMAN and KELLY TOPPING

16. Signatories on the behalf of the Signing Parties represent that they are authorized to bind the parties to this Consent Decree and Order. This Consent Decree and Order may be signed in counterparts and a facsimile signature shall have the same force and effect as an original signature.

Dated: _____, 2015 PLAINTIFF MAX WADMAN

MAX WADMAN

Dated: _____, 2015 PLAINTIFF KELLY TOPPING

KELLY TOPPING

Dated: _____, 2015 DEFENDANT DISCOVERY BAY YACHT HARBOR, LLC

By: _____
JOHN E. AMARAL, Authorized Representative for
Discovery Bay Yacht Harbor, LLC

Dated: _____, 2015 DEFENDANT KEN HOFMANN

KEN HOFMANN

APPROVED AS TO FORM:

Dated: 9/19, 2015

CELIA McGUINNESS, ESQ.
LAW OFFICES OF PAUL L. REIN
STEVE DERBY, ESQ.
DERBY DISABILITY LAW

By: 
Attorneys for Plaintiffs
MAX WADMAN and KELLY TOPPING

1
2 Dated: August 27, 2015

3 RUPERT P. HANSEN, ESQ.
4 COX WOOTTON LERNER GRIFFIN & HANSEN LLP

5 By: 
6 Attorneys for Defendants KEN HOFMANN, individually,
7 and DISCOVERY BAY YACHT HARBOR, LLC

8
9 ORDER

10 Pursuant to stipulation, and for good cause shown, IT IS SO ORDERED.

11
12 Dated: 9/16, 2015

13 
14 Honorable WILLIAM H. ALSUP
15 United States District Judge
16
17
18
19
20
21
22
23
24
25
26
27